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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 434

ADA L. BURROUGHS AND JAMES CANNON, JR.,
Petitioners.

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR PETITIONERS

The government's theory is that the office of President is a constitutional one essential to the Federal government; that although the method of the appointment of presidential electors is committed to the state Legislatures, nevertheless there are certain functions with respect to the election of a President over which Congress has jurisdiction, such as the counting of the electoral vote, also the necessity for the House of Representatives to elect the President in the event of a

failure of one candidate to obtain a majority in the Electoral College; and that in order to obtain information for the proper discharge of these functions, Congress, under the elastic clause, Art. I, Sec. 8, Clause 18 of the Constitution of the United States, may enact legislation providing publicity for the activities of citizens influencing the election of presidential electors by which it may judge of the fitness of a presidential candidate, providing such legislation does not conflict with the power of the states to appoint electors.

It is respectfully submitted that such a construction of the Constitution of the United States cannot be justified for the following reasons:

The Constitution, Art. II, Sec. 1, expressly commits to the state the power of the appointment of presidential electors and at the same time defines the scope of authority Congress is to exercise over that subject, viz., to "determine the time of chusing the electors and the date on which they shall give their votes, which day shall be the same throughout the United States."

The sections of the statute and the acts charged in the indictment relate solely to acts affecting the appointment of electors, a matter committed to the states exclusively.

The election at which electors are appointed, if the Legislature selects that method, is held and controlled exclusively by the states. The qualifications for suffrage, except as protected against discriminations covered by the Fourteenth, Fifteenth and Nineteenth Amendments to the Constitution of the United States, are fixed by the state law.

Congress has no power to regulate elections except where authority is expressly conferred by the Constitution, e. g., in the case of members of Congress.

Even here it is limited and is not to be extended by implication.

United States v. Gradwell 243 U. S. 476, 61 L. Ed. 875, 37 Su. Ct. Rep. 407.

Newberry v. United States, 256 U. S. 232, 41 Su. Ct. Rep. 469, 65 L. Ed. 913, 918: it was said:

> "We find no support in reason or authority for the argument that because the offices were created by the Constitution, Congress has some indefinite, undefined power over elections for Senators and Representatives not derived from Sec. 4."

The elastic clause will not support an implied power with respect to a subject which the Constitution has expressly committed to the states.

Kansas v. Colorado, 206 U. S. 46, 88; 51 L. Ed. 956, 970

This Court has held with respect to a presidential elector:

> "They are no more officers or agents of the United States than are the members of the state Legislatures when acting as electors of Federal Senators, or the people of the states when acting as electors or representatives in Congress." (Fitzgerald v. Green 134 U. S. 377, 33 L. Ed. 951, 952.)

This Court has upheld the right of a state to punish the acts of citizens in unlawfully influencing the election of presidential electors.

Fitzgerald v. Green, 134 U. S. 377, 33 L. Ed. 951, 10 Su. Ct. Rep. 586.

The tenuous nature of the reasoning advanced by the government attempting to justify the provisions of the Federal Corrupt Practices Act relating to pres-

idential electors as a publicity act seeking merely to provide information by which the fitness of a candidate for President may be determined, (a) when the House of Representatives is required to elect from among the three candidates receiving the greatest number of votes in the Electoral College where no candidate has a majority; or (b) for the information of Congress in counting the electoral vote, is shown by the following:

Such a theory fails to distinguish between the function of the House of Representatives in judging the qualifications of an individual who is himself a candidate for a distinctly national office, that of President, and that to which the Federal Corrupt Practices Act relates, which seeks to regulate the activities of citizens seeking to influence the election of presidential electors, whom this court has declared to be non-Federal officers. These are essentially different.

It is only fair to direct the attention of the Court to developments since this indictment was returned which are matters of public record and of which it may take judicial notice. Since the returning of this indictment the Select Committee of the Senate appointed to investigate Senatorial campaign expenditures, after hearing testimony from eminent authorities on constitutional law, submitted its final reports to the 72nd Congress, S. Report No. 20, accompanying S. 2316, 72nd Congress, p. 977, Cong. Rec., in which the committee, submitted to the Senate an entirely new bill that would expressly repeal the present Federal Corrupt Practices Act of 1925. In the Committee report, No. 20, p. 8, it was said:

> "The most important **departure in principle** from the corrupt practices act of 1925 lies in the fact that the present bill seeks to center the responsibility for campaign expenditures upon such can-

didate or his agent and prohibits all those who are not properly authorized by the candidate or his agent from receiving contributions or making expenditures.

"Under this plan the **candidate becomes legally responsible for the expenditures of all persons and committees whom he or his agent has authorized to act in his behalf,** while all unauthorized persons and committees receiving contributions or making campaign expenditures become subject to the penalties provided in the bill.

"Previous legislation has been directed toward the control of expenditures made in connection with the choice of presidential electors. **The present bill proceeds on the theory that the offices of President and Vice President of the United States are Federal offices, the protection of which from the taint of corruption is of supreme importance to the welfare of the Nation."**

Note the expression used by the committee, "departure in *principle*" in distinguishing between the present act and the proposed law. Here the committee makes the distinction between legislation which attempts to regulate acts influencing the appointment of presidential electors, a matter which is entirely reserved to the Legislatures of the states, and the right of Congress to legislate with respect to the activities of an individual who is himself a candidate for a distinctly Federal office, such as that of President or Vice President of the United States. A statute designed to show the activities of the candidate for President and of those he authorized to associate with him might be appropriate as furnishing information upon which the House of Representatives might act in the event it is called upon to elect.

The provisions of the present Federal Corrupt Practices Act relating to presidential electors does not apply to a candidate for the office of President. It

relates only to a candidate for presidential elector. It does not even require that the treasurer of a political committee shall designate the name of the presidential candidate in whose interest it collects and expends money, as, indeed, it could not, since any presidential elector, under the electoral system, is constitutionally free to vote for any person he may see fit. Therefore, since the act does not require and, in fact, could not require the activities of the citizen working for electors to be related to a particular presidential candidate, how can authority for the requirement of the filing of reports of the voluntary acts of citizens supporting presidential electors, for which activities the presidential candidate may not be in any way responsible, be implied on the theory that it affords a means of determing the fitness of the person for whom the House of Representatives is to vote for President? The activities of citizens required to be reported relate to acts undertaken to influence the election of a candidate for an office filled by the state while the duty of the House to judge of the fitness of a presidential candidate relates to an entirely different individual who is a candidate for a Federal office.

The true nature of the electoral system completely refutes the government's contention. The founders of the government intended that each state should appoint presidential electors in such manner as the Legislature might direct to cast the vote of the people of the state for President. They were to be, as Hamilton declared in the Federalist, No. 68, "independent electors," who should meet and vote for President and Vice President, at least one of whom should be from a different state from themselves.

Miller, United States Constitution, 149.

Rawle, Constitution, 55.
Story, Constitution, Sec. 1473.

In speaking of the failure of the electoral system to operate as the framers of the Constitution anticipated, this Court said:

> "But we can perceive no reason for holding that the power confided to the states by the Constitution has ceased to exist because the operation of the system has not fully realized the hopes of those by whom it was created. Still less can we recognize the doctrine, that because the Constitution has been found in the march of time to be sufficiently comprehensive to be applicable to conditions not within the minds of its framers, and not arizing in their time, it may therefore, be wrenched from the subjects expressly embraced within it, and amended by judicial decision without action by the designated organs in the mode by which alone amendments can be made."
>
> McPherson v. Blacker, 146 U. S. 1, 13 Su. Ct. Rep. 3, 36 L. Ed. 869, 877.

That the existence of such an implied legislative power is not essential to the integrity of the government is shown by the fact that for 136 years the Congress of the United States never undertook to require a report of the contributions and expenditures made to influence the selection of presidential and vice presidential electors. This was pointed out in Fitzgerald v. Green, where it was said:

> "Congress has never undertaken to interfere with the manner of appointing electors, or where (according to the now general usage) the mode of appointment prescribed by the law of the State is election by the people, to regulate the conduct of such election, or to punish any fraud in voting for electors; but has left these matters to the control of the States."

Fitzgerald v. Green, 134 U. S. 377, 10 Sup. Ct. Rep. 586, 33 L. Ed. 951, 953.

The framers of the Constitution contemplated that the states should regulate and punish the acts of citizens improperly influencing the selection of electors who are to cast the vote of the people of the state for President. Many states have done so. Some have failed or refused to do so. Ratification of the Constitution would probably have been defeated had any such broad claim of right of the Federal government to prescribe how citizens may associate for political action in choosing a state's electors been suggested at that time.

The provisions of the Federal Corrupt Practices Act relating to presidential electors cannot be regarded as a mere publicity requirement, as the government insists, for the reasons:

(a) It prescribes the only methods by which any organized activity of citizens involving the expenditure of money may be conducted in connection with the selection of presidential electors, with certain exemptions hereinafter referred to.

(b) The organized effort of citizens involving the contribution and expenditure of money in the circumstances to which the act applies can be done only through the medium of a "political committee."

(c) It prescribes how the political committee shall be constituted. It must have a chairman and a treasurer.

(d) It makes it the duty of any individual who receives money "for a political committee" to account for it to the treasurer within five days. The failure to do so is an indictable offense.

(e) It prescribes how the accounts of the political

committees are to be kept; that receipts and vouchers covering the expenditures in excess of $10 shall be preserved for a period of two years.

(f) It makes a difference in pains and penalties between the contributions and expenditures made to regularly organized political parties, the local committees of which are exempt from keeping accounts or making reports. Other organized citizens active in two or more states, if they are a branch of a national committee, association or organization, are required to appoint a committee, keep account, and file reports.

(g) Branches of organized political movements expending money in the selection of presidential electors in two or more states are exempt if they are part of a movement sectional in character and not a branch of a national committee, association or organization.

(h) It prohibits and penalizes not simply the failure to report contributions and expenditures to the clerk of the House of Representatives (which is the publicity feature of the act) but the acceptance of contributions or the making of expenditures until a political committee has been appointed.

(i) It prohibits absolutely any corporation whatsoever from making a contribution to influence the selection of presidential electors. This has nothing to do with publicity. This is clearly legislation regulating acts affecting the appointment of electors and applies regardless of whether the corporation is created by Federal or state legislation.

By prescribing how a political committee is to be organized and fixing the only medium through which the organized political activities of a citizen in the state under the circumstances covered by the act can be conducted, it invades the prerogative vested by the Constitution in the state Legislature to determine the

manner of appointment of electors and to regulate the acts of citizens influencing their appointment, and may give rise to conflicting regulations.

That the Federal Corrupt Practices Act respecting elections does conflict with state regulations on the subject is clearly illustrated by the case of the laws of Alabama.

The Alabama Corrupt Practices Act, found in the Code of 1923, Secs. 582-600, relating to corrupt practices, provides for publicity of contributions and expenditures made to influence the election of presidential electors. That this act applies to presidential electors is shown by the fact that Sec. 586 limits the amount which may be expended by a candidate for the office of presidential elector to the sum of $100.00. Sec. 582 defines a political committee. Under that section, any one or more persons who shall be elected, appointed, chosen or associated for the purpose wholly or in part, in directing the raising, collection or disbursement of money used or to be used to further or defeat the election of any person to public office is declared to be a political committee. Sec. 588 requires that any candidate, within five days after the announcement of his candidacy, if the office be a state office, shall file with the secretary of state the name of not less than one nor more than five persons selected to receive, expend, audit and disburse all moneys contributed, donated, subscribed or in any manner furnished or raised for the purpose of aiding or promoting the election of such candidate, together with a written acceptance or consent of such person to act as such committee. But any candidate may, if he sees fit to do so, declare himself as the person chosen for such purpose. By Sec. 591 it is provided that "All contributions, donations and subscriptions made for

or on behalf of any candidate shall be made to the committee named by such candidate." By Sec. 593 is required the filing of reports of contributions and expenditures with designated state officials on specified dates.

Contrast this with the Federal Corrupt Practices Act of February 28, 1925. By Sec. 242 of that act it is declared that no contribution shall be accepted and no expenditure made by or on behalf of a political committee for the purpose of influencing an election until a chairman and a treasurer shall have been chosen. That act expressly requires that every political committee shall have a chairman and a treasurer.

It is respectfully submitted, therefore, that if the provisions of the Federal Corrupt Practices Act are constitutional, then either one or two things follow: That where money expended to influence the election or defeat of a candidate for presidential elector in that state by an organization which is a branch or subsidiary of a national organization other than a regular party committee, such candidate for presidential elector may not serve as his own political committee and he cannot designate a single individual to act as his committee, as the law of Alabama expressly provides, since under the Federal law every political committee must have a chairman and a treasurer. From this it must follow, therefore, that either the Federal Corrupt Practices Act is unconstitutional because it clearly interferes with the method prescribed by the state of Alabama for regulating publicity regarding contributions and expenditures made to influence the election or defeat of presidential electors, or the state law governing the constitution of such committees and publicity regarding their activity is invalid. There can be no concurrent operation of the two since they are squarely in conflict.

Sec. 254 of the Federal Corrupt Practices Act can have no application to such a situation since it provides only the rule of construction where the Federal act conflicts with the laws of a state relating to the nomination or election of candidates, and the Federal act by the definition of the term "candidate" in Sec. 241-b excludes presidential electors from that term. It refers only to candidates for Senator or Representative or Delegate or Resident Commissioner in Congress.

As to them the Constitution expressly provides by Art. I, Sec. 4, that "Congress may at any time make or alter such regulations" relating to the times, places and manner of holding elections for Senators and Representatives. This is an instance of an irreconcilable conflict between Federal and state laws relating to publicity concerning acts of citizens affecting the election of presidential electors.

Furthermore, Sec. 243 of the Federal Corrupt Practices Act requires that the treasurer of a political committee shall preserve all receipted bills and accounts for at least two years from the date of the filing of the statement containing these items. What is the situation where the state law may prescribe a different period? Which act takes precedence, the state publicity requirement, or the Federal? These are but a few concrete illustrations of the conflict which necessarily arises out of invoking the doctrine of implied power in Congress with respect to a subject matter which has by the Constitution in express terms been committed to the states and which has been held by this Court to be a state function.

The implication arising from the construction contended for by the government, viz., the Federal legislation regulating the organized acts of citizens seeking to influence the selection of presidential electors may be valid insofar as it does not conflict with the

power committed by the Constitution to the state to appoint electors and to regulate and punish the acts of citizens influencing their appointment, gives rise to an anomalous situation under which a Federal law may be valid only so long as a state fails to act with respect to the subject matter or it does not conflict with the provisions of a state law on the subject. This completely reverses the accepted principles of constitutional law and indicates the fallacy of seeking to justify the existence of an implied power over a subject matter committed by the Constitution to the states. The Constitution of the United States, Art. VI, declares "The Constitution and the laws of the United States which shall be enacted in pursuance thereof shall be the supreme law of the land." By every canon of constitutional construction, therefore, if an implied power exists in Congress to enact publicity legislation relating to the acts of citizens influencing the election of presidential electors, then that power should be paramount and should not be required to give way whenever any conflicting state legislation regarding how a political committee shall be constituted may arise, as suggested in the case of Alabama.

THE DUTY OF CONGRESS TO COUNT THE ELECTORAL VOTE, AS PRESCRIBED IN ORIGINAL ART. II, BUT NOW BY THE TWELFTH AMENDMENT, CONFERS NO AUTHORITY TO REGULATE THE ACTS OF CITIZENS AFFECTING THE APPOINTMENT OF ELECTORS WHO ARE TO CAST THE VOTE OF THE PEOPLE OF THE STATE FOR PRESIDENT.

The extent of the power of Congress under this section has not been judicially settled. The weight of precedent is against the contention that this confers any implied authority to regulate the circumstances under which the primary vote for electors is

cast. The Electoral Commission, appointed in 1877 to settle the dispute in the Hayes-Tilden contest, found:

> "There exists no power in this Commission and there exists none in the two Houses of Congress in counting the electoral vote, to inquire into the circumstances under which the primary vote for electors was given."

The instances in which objection has been made in Congress to counting the electoral votes of states are collected in Hinds' Precedents of the House of Representatives, Chap. LXI. These show that where Congress has rejected the electoral votes of the states it has been where the infirmity could be established by examination of the certificate itself, such, for example, as: (a) Where an elector was constitutionally ineligible by reason of holding a Federal office; (b) where the certificate showed the vote to have been cast upon a date other than that constitutionally prescribed; (c) where the question was whether a state had been legally admitted to the Union; (d) or which or two conflicting certificates represented the state; (e) or where the candidate voted for as President was dead when the vote was counted. In such instances Congress has, in the discharge of its constitutional function to count the vote, determined whether a particular vote should be counted. These are matters, however, determinable from the certificate, without the necessity for examining the circumstances under which the primary vote for the elector was cast. The present law (Sec. 6, Title 3, U. S. C., Act of Feb. 3, 1887, recognizes state authority to settle controveries respecting electors. Congress has repeatedly disavowed such a right. It is submitted, therefore, that the function of Congress to count the electoral vote gives it no implied authority to under-

take to regulate acts of citizens affecting the circumstances under which votes in a state for an elector are cast, as is attempted to be done by the Federal corrupt Practices Act of 1925.

IT IS COMPETENT FOR THE COURT IN CASE OF THE EXERCISE OF DOUBTFUL CONSTITUTIONAL POWER BY CONGRESS TO EXAMINE THE REPORT OF THE COMMITTEE AND THE EVIDENCE UPON WHICH CONGRESS ACTS, WHICH, IN THE INSTANT CASE, ARE SUFFICIENT TO OVERCOME THE ORDINARY PRESUMPTION OF CONSTITUTIONALITY OF THE STATUTE.

The facts with respect to the origin and history of the Federal Corrupt Practices Act of 1925, if examined, are clearly sufficient to overcome any presumption of the constitutionality of the act, so far as it relates to presidential electors. The present act, with the exception of a slight change in Sec. 302 (c) is identical in language with what was known as the Cable Bill, reported on May 13, 1924, by Mr. Cable from the Committee on Election of President, Vice President and Representatives in Congress, H. R. 8956, accompanied by House Report No. 721, 68th Congress, First Session. (Cong. Record, p. 8496). The report submitted by Mr. Cable does not refer to the provisions of the bill relating to presidential electors, nor do the printed hearings of testimony upon bills upon the subject pending before the committee indicate any discussion of the matter.

Shortly after the Cable Bill had been reported in the House, when S. 1898, a bill to readjust the compensation of employees in the postal service, was under consideration in the Senate, Mr. Borah offered an amendment in the nature of a rider to that bill to provide a Federal corrupt practices act which was adopted by the Senate. (Cong. Record, p. 9516). This amendment contained no reference to presidential electors or

contributions made to influence their appointment. At that time Mr. Borah said, concerning the scope of his amendment:

> "It covers, in my opinion, all that we can cover under the decision in the Newberry case. It covers the election of all Federal officials. It does not cover, of course, the election of State officials nor can it do so." (Cong. Record, p. 9515.)

Senator Walsh, of Massachusetts, also said at this time:

> "I agree the Federal authority is limited. I believe the best way to reach the election abuses is through State legislation, because it is doubtful if you can pass a Federal law unless it applies to committees interested in elections being held in more than one State. You have to have it apply to political committees taking part in the election in two or more States. OF COURSE, WE CAN PASS CORRUPT PRACTICES LAWS THAT APPLY TO THE ELECTIONS OF SENATORS AND REPRESENTATIVES ONLY. * * *
>
> "I think the field in which the National Government can legislate on this subject is somewhat limited. It is my opinion that the State governments have very nearly absolute control over the manner of electing presidential electors, Senators, and Members of the House of Representatives. I think it is largely, if not solely, a State function. Most of the States have passed corrupt practices acts dealing with the question, but these laws are not uniform and apparently are rarely enforced." (Cong. Record, p. 9514, 1915.)

Because of disagreeing amendments between the Senate and House, the Postal Bill was sent to conference. The report of the conferees was submitted in the Senate on June 5, 1924, (Cong. Record, p. 10 613) and in the House on June 6 (Cong. Record, p. 11 015). The report

of the Committee on Conference appointed by the two houses shows the conferees substituted for the Borah amendment the provisions of the Cable Bill which had been reported in the House shortly before from the Committee on Election of President, Vice President, and Representatives in Congress, the only change made by the conferees being in what is now Section 241 (c) of the law as finally drafted.

The Cable Bill, as reported in the House, in Sec. 2 defined the term "political committee" as follows:

> "(c) The term 'political committee' includes any committee, association, or organization, which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence in two or more States the election of candidates or presidential and vice presidential electors."

For which the conferees substituted the following (now Sec. 241 (c) of the present Act):

> "(c) The term 'political committee' includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates or presidential and vice presidential electors (1) in two or more States, or (2) whether or not in more than one State if such committee, association, or organization (other than a duly organized State or local committee of a political party) is a branch or subsidiary of a national committee, association, or organization."

At the time of the submission of the conference report Mr. Moses declared:

> "I think that putting a rider of any sort on a bill such as the postal salaries bill is an entirely inexcusable method of producing legislation, how-

> ever desirable. In the last days of the session, with a great bill here in which every Member of both Houses of Congress is deeply interested, affecting the interests of more than 300,000 Government employees, a bill to which substantially every Member of the Senate and substantially every Member of the House has given his approval, a bill representing the result of work and labor on the part of a joint subcommittee which spent days in taking testimony exhaustively—to put into the bill anything like the Cable bill, comprehensive in its subject matter and to which we have had no time to give attention in committee or the Senate to examine, I maintain is an entirely indefensible method of producing legislation of that sort. I want my personal position to be made known. * * *
>
> "I am opposed to this method of producing this kind of legislation; but if I have to take this method of legislation in order to get relief for the men in the Postal Service, I will take it. However, that is not going to prevent me from making my protest against the legislation." (Cong. Record, p. 10, 620.)

The conference report was adopted by both Houses, agreed to in the Senate (Cong. Record, p. 10, 652) and in the House (Cong. Record, p. 11017), was sent to President Coolidge for his signature. He vetoed the measure on account of the postal salary increase, saying with respect to the corrupt practices provision, "If that provision stood alone I should approve that part of the bill relating to campaign funds." (Cong. Record, p. 11, 128, June 7, 1924). The bill failed to become law.

At the second session of the 68th Congress the House Committee on Election of President, Vice President and Representatives in Congress conducted hearings on H. R. 10,268, a bill by Mr. Cable to provide for the choice of an officer to act as President in the event the President and Vice President should not have been elected

and qualified as provided by law. At that time the Hon. Wm. Tyler Page, then clerk of the House of Representatives, who has made a study of the electoral system, testified before the committee regarding the process of the election of President. He said, regarding the power of the State legislatures over the appointment of presidential electors:

> "We speak of the electors in the States as the 'Electoral College.' This term was first used about the year 1800 and in 1845 it appeared in legislation. It is therefore an official term. The Electoral Colleges were intended to be the exact counterpart of the joint convention of the two Houses of Congress in the representations of the State as units, as well as the population of the States. We have seen that electors were to be appointed in such manner as the State legislatures may direct. **This power was to be absolute.** A State, if it chose, could vest the appointment of electors in a turnpike corporation or any other set of individuals; and as a matter of fact in our early years under the Constitution in many of the States presidential electors were not elected at all but were APPOINTED BY THE LEGISLATURES. South Carolina was the last State to give up the practice of appointing. This she did in 1868, and since that time electors in all of the States have been chosen by the people on a general ticket. Two are known as presidential electors at large, corresponding to the number of Senators from each State, and the remainder equal in number to a State's Representatives, are selected from but not by congressional districts."

He further said:

> "The States have **absolute control** of the appointment of electors to fill vacancies, to settle controversies as to the qualifications of electors, and other disputed matters. But Congress in the act of 1887 declared that they would not recognize

the determination of States made after a certain date. In justification of this it was asserted that Congress did not attempt to determine disputes but simply to state what evidence it would receive as conclusive to a determination. AT BEST THE LAW IS OPEN NOT ONLY TO SERIOUS CONSTITUTIONAL OBJECTION, BUT TO THE CRITICISM THAT IT LEAVES UNSETTLED A NUMBER OF POINTS THAT IN THE FUTURE MAY EASILY LEAD TO SERIOUS DISPUTES. Pickney, of South Carolina, one of the most prominent members of the Constitutional Convention, said he well remembered that it was the object of the convention to give to Congress no interference in or control over the election of the President; that it would not have been safe to have given Congress the right to object to any votes or even to question whether they were constitutionally or properly given. It is under this same act of 1887 that the whole machinery is set up for the certification and counting of the electoral vote, except as provided in the twelfth amendment. And should this act ever be found to be unconstitutional much confusion would result. Nothing short of a constitutional amendment can supply the omissions which time has revealed." (Capitals, heavy face ours.)

The agitation for the enactment of a Federal Corrupt Practices Act continued in the second session of the 68th Congress, and on January 29, 1925, Mr. Walsh, of Massachusetts, when S. 3674, another bill to reclassify the salaries of post masters and employees of the postal service was pending in the Senate, offered as a rider to that bill an amendment in the language of the Cable Bill as it had been embodied in the former postal salaries bill that had been vetoed by the President. (Cong. Record, p. 2627). The amendment was adopted with practically no discussion. No mention was made of the provisions of the bill relating to presidential electors although it will be recalled that

Mr. Walsh, himself, had expressed doubt at the former session regarding the power of Congress to legislate upon matters affecting the appointment of presidential electors.

Later, when H. R. 11,444, providing for salary increases of postal employees was reported in the House by Mr. Kelly from the Committee on Post Offices and Post Roads, which is found printed in the Congressional Record of February 10, 1925 (p. 3419) it contained no reference to corrupt practices. The bill passed the House and went to the Senate, where it was referred to the Senate Committee on Post Offices and Post Roads, (Cong. Record, p. 3479) was duly reported, and when it came before the senate in Committee of the Whole, there was offered an amendment which substituted for the entire House bill the text of S. 3674, which had passed the Senate on January 29, 1925, and which contained the rider providing for a Federal Corrupt Practices Act. On this occasion the amendment was not even so much as read. Mr. Moses said:

> "I ask unanimous consent that the formal reading of the committee amendment may be dispensed with. My reason for asking that is that the amendment which the committee proposes is the entire bill, which was adopted by the Senate after eight days of close debate, and with all of the items which were then passed upon by the Senate. The provisions are so thoroughly familiar to the Members of the Senate I think the request may be acceded to." (Cong. Record, p. 3826.)

The bill was sent to conference and finally passed in the Senate (Cong. Record, p. 4697-4707) and in the House (Cong. Record, p. 4655), was sent to the President, signed, and became P. L. 506 of the 68th Congress.

The history of this legislation shows that is was passed without any discussion whatsoever of the vital

constitutional question involved, also that those who sponsored the proposal expressed serious doubts as to the constitutional power of Congress. Some time before this, in the 66th Congress, on March 26, 1920, Senator Pomerene, of Ohio, a distinguished constitutional lawyer, in speaking of the power of Congress to control the appointment of presidential electors, declared:

> "I share the Senator's detestation, if I may use that word, of the large expenditure of money in elections, and I want to join hands with the Senator in trying to remedy this situation, if it can be done; but I wish to ask the Senator this question: Has he investigated sufficiently to determine, in his own mind, what, if any, constitutional authority Congress has to deal with the subject of presidential primaries of election? Before the Senator answers that question, if he will permit me to make an observation or two, I desire to say that it is no question about our right to control primary or general elections so far as they relate to Representatives in Congress and to Senators, but **our courts have held at various times that a presidential elector was not a Federal officer; that he was a State officer, and that the State Legislatures have the right to provide for their appointment. That has been construed to mean either appointment by the legislature or by election. They are now elected by popular vote.**
>
> "I recognize the fact that Congress has the right to determine the time of choosing the electors and the day on which they shall cast their vote, which day shall be the same throughout the United States.
>
> "I had occasion a couple of years ago when this matter was engaging the attention of the committees to look into the question of the right of Congress to control presidential primaries. **I know that that matter was given very serious thought by some of the ablest lawyers of this body, and at that time we were of the opinion that we could**

not control the presidential primaries. I have not had the opportunity to examine the bill which has been presented by the Senator from Idaho, though I heard it in part read. It may be that it is builded upon some different theory. I hope the joint investigation of Senators will lead to a conclusion that there is this power. I present the subject now so that I, for one, may have the benefit of the Senator's views. If there is no such authority, then there ought to be an amendment to the Constitution to cover the case." (Cong. Record, p. 4856-4857.) (Heavy print ours.)

19. SEC. 251, PROHIBITING CAMPAIGN CONTRIBUTIONS BY CORPORATIONS, UNCONSTITUTIONAL IN PART.

The words, "presidential elector," appear in the Federal Corrupt Practices Act of 1925 in only two places, first in Sec. 241 (c) defining a political committee, hereinbefore discussed, and again in Sec. 251.

Section 241 (c) of the present Corrupt Practices Act of 1925 marks the first attempt by Congress to enact a publicity requirement with respect to contributions made to influence the election of presidential and vice-presidential electors. All former legislation respecting Corrupt practices having been confined to matters affecting the election of members of Congress, with the single exception of the act of January 26, 1907, (chapter 420, 40 Stat. L. 864,) prohibiting contributions by corporations to influence the election of presidential electors, now carried in the present corrupt practices act as section 251 (U. S. C. Title III, Chapter 8). Sec. 251 provides:

> "It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political office, OR FOR ANY CORPORATION WHATEVER to make a

> contribution in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section." (Capitals ours.)

The act attempts to prohibit any corporation whatever from making a contribution in connection with an election in which presidential and vice presidential electors are elected. This section of the act is not involved in the indictment in the instant case, but the constitutional power of Congress to enact it, so far as it applies to CORPORATIONS CHARTERED BY THE STATE, is precisely the same as that involved in requiring a report of contributions made by individuals to influence the election of presidential electors. It will be noted that Congress does not require individuals to make any report of contributions to influence the election of presidential electors (See Sec. 245 of the Federal Corrupt Practices Act of 1925). Individuals are required to report contributions only when made to influence the election of "candidates" in two or more states and the term "candidate" is defined by Sec. 241 (b) to mean a candidate for Congress.

The constitutionality of the act prohibiting contributions by corporations has never been before the United States Supreme Court and its provisions have rarely been invoked. It bears upon its face, however, evidence that its framers appreciated that it might be unconstitutional in part, for after prohibiting contributions by any corporation organized by the authority of any law of Congress, it goes further and attempts to prohibit contributions by any corporation whatever. The authority of Congress to regulate corporations created by Fed-

eral law cannot be successfully disputed. The framers of the act, therefore, made its prohibitions apply to them specifically, and then followed with the general language, "any corporation whatever." If there had been no doubt in the mind of the draftsmen regarding the power of Congress over **all corporations**, the distinction between corporations chartered by national law and state corporations would not have been made and the language "or any corporation whatever," would have been superfluous.

The act would simply have prohibited any corporation from making a contribution to influence the election of members of Congress or presidential and vice presidential electors. It is apparent that the act was purposely made severable. As Congress has no power over the appointment of presidential electors and no power over corporations created by the States, the act is clearly unconstitutional as to them, though it is unquestionably valid in so far as it applies to corporations created by Federal law.

The only case in which the constitutionality of this act has been before the courts is in United States v. United States Brewers Assn., 239 Fed. 163, 169, where it was said:

> "The fourth reason assigned against the validity of the act is that it tends to prohibit, make criminal, and punish money contributions made to a candidate for a state office, or to the agent for such candidate, or in connection with his election. As I understand defendants' position, this reason is based on the use of the words 'any election at which Presidential and Vice Presidential electors' are 'voted for.'
>
> "If it should be held that Congress exceeded its power in including, among others, elections in which Presidential and Vice Presidential electors are to be voted for, on the ground that they are

officers of the state and not of the federal government, that would not, in my opinion, invalidate the act except as to that particular provision.

"If that which is unconstitutional can be separated from that which is not, the one may be rejected, and the other retained. This rule is recognized in U. S. v. Reese, 92 U. S. 214, 23 L. Ed. 563, and U. S. v. Steffens, 100 U. S. 82, 25 L. Ed. 550, cited in briefs of defendants' counsel.

"On the whole, I am of opinion that, in enacting section 83, Congress kept within its constitutional powers. Were I in doubt upon this question, I would resolve that doubt in favor of the constitutionality of the act." (United States v. United States Brewers Assn., 239 Fed 163, at 169.)

This case did not settle the question of the constitutionality of the act in so far as it related to presidential electors, for the indictment in that case charged contributions by the Brewers Association to influence the election of BOTH MEMBERS OF CONGRESS AND PRESIDENTIAL AND VICE PRESIDENTIAL ELECTORS, and as the question came before the district court on demurrer to the indictment there was ample ground upon which the district judge could justify his action in sustaining the indictment and overruling the demurrer. While there is some language used by the district judge in that case indicating that he regarded the act as constitutional, it is purely dictum and is not conclusive of the question.

The unconstitutionality of that portion of the act of 1907 which prohibits any corporation whatsoever from making a contribution to influence the election of presidential electors did not escape notice in Congress. When the bill, S. 4563, was pending before the House on January 21, 1907, (Cong. Record, 59 Cong., 2 Sess., p. 1453) Mr. Mann, of Illinois, one of the ablest constitutional lawyers in that body, said:

"I am not in favor of the passage of this bill for two reasons. First, I do not believe that the Government of the United States has the constitutional authority to regulate and control all of the elections in the country. * * *

Mr. Kiefer, of Ohio, said:

"But we are all now on a virtuous footing. Substantially all of us, I think, are going to vote for this bill, although it has elements in it that suggest that it may be unconstitutional. The election of Members of the House of Representatives in the different States or in the general assemblies of the different States is pointed out as one of the cases where contributions are not to be made to aid in securing the election of anybody. How that comes within the purview of the Constitution I do not know. It is even doubtful about our right to prohibit corporations from making contributions to control elections of the Members of this House. Under section 4 of Article 1 of the Constitution we find this provision:

"'The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.'

"The effect of this article and its construction is considered in Ex parte Seibold (100 U. S. 371, 382-385).

"How are we by law to provide against contributions unless we have assumed to do that which we might do under the last clause of this section 4, to regulate the election of Representatives in different States. I only make this suggestion in the line of having it understood that while I vote for the bill I do it with the mental reservation as to the constitutionality of it."

Mr. Robinson, of Arkansas, now United States Sena-

tor from that state, said:

> "I have had no opportunity to investigate the constitutional features or the unconstitutional features of this bill, but I want to say that the political history of this Republic during the last few years has emphasized the necessity for some such legislation as is provided for in this measure.
> * * *

The only other acts passed by Congress relating to the appointment of presidential electors are those referred to in the several Civil Rights Acts intended to protect citizens against the discriminations covered by the XIVth and XVth Amendments. These are passed pursuant to a specific section in the constitutional amendments themselves authorizing Congress to enact appropriate legislation and rest upon an entirely different footing from the Federal Corrupt Practices Act, for which there is no constitutional authorization and which attempts to regulate acts affecting the appointment of presidential electors, a matter which is expressly reserved to the people of the States to be exercised as the State legislature may direct.

THE MAJORITY OPINION MISCONSTRUED THE STATUTE IN HOLDING INDICTMENT SUFFICIENT

The question of statutory construction involved upon demurrer to the indictment was whether Congress intended by the Federal Corrupt Practices Act of 1925, to hold the treasurer of a political committee criminally liable for failing to report to the Clerk of the House of Representatives indirect contributions, not to the committee, but "for the committee" without any allegation that the contribution was ever received, or accepted by the committee or any agent thereof or that the treasurer had knowledge of the contribution.

The contention of petitioners is that the Federal

Corrupt Practices Act of 1925, in Sec. 241. (c) Title 2 U. S. C. defines a political committee as one which accepts contributions for the specified political purpose. Contributions are then divided into two classes: 1st. Direct contributions, those made directly to the committee. No such contribution is charged in this case. 2nd. Indirect contributions, those made for the committee. The distinction between direct and indirect contributions is clearly made in Secs. 242, 243, and 244. Sec. 242 requires that before contributions are accepted a political committee shall be appointed, which is required to have a chairman and treasurer. It makes it the duty of the treasurer of a political committee to keep a detailed and exact account of all contributions made to or for such committee. This is followed by Sec. 243, which defines the method by which indirect contributions, those made for the committee, are accounted for to the treasurer. Following this is Sec. 244 (upon which the indictment is based), defining the duties of a treasurer of a political committee with respect to the filing of reports of contributions with the Clerk of the House of Representatives. This section requires reports to be made of contributions: 1st, To the committee; 2nd, For the committee. Since Sec. 243 immediately preceding is the one which defines what is meant by a contribution "for the committee," the only logical and reasonable interpretation of the section is that the contributions "for the committee" which Congress intended that the treasurer should report are those accounted for to the treasurer as provided in Sec. 243.

Sec. 243 reads:

> "Accounts of contributions received. Every person who receives a contribution for a political committee shall, on demand of the treasurer, and in any event within five days after the receipt of

such contribution, render to the treasurer a detailed account thereof, including the name and address of the person making such contribution, and the date on which received."

Contributions made for the committee which the treasurer is required to report are those which come into existence as provided in Sec. 243, and the duty of the treasurer to report with respect to such contributions is contingent upon whether there has been an accounting to the treasurer for such contributions, or other facts giving rise to the duty of the treasurer to demand an accounting. As to indirect contributions, therefore, it clearly never was the intention of Congress that the treasurer of a political committee should be indicted and prosecuted merely upon the bare allegation that some person made a contribution for the committee without alleging that the recipient accounted to the treasurer for the contribution or other facts which imposed the duty upon the treasurer to demand an accounting of the recipient of the contribution made for the committee.

It is plainly apparent from Sec. 243, that, as to indirect contributions, Congress intended that there should be an accounting to the treasurer of the political committee, and the duty of the treasurer to report cannot arise unless there is alleged and proved either that the party who received the funds accounted to the treasurer, or facts giving rise to the duty upon the part of the treasurer to demand an accounting of the recipient. Neither of these allegations is made in the indictment in the instant case. If the statute be construed to mean that the treasurer of a political committee can be held criminally liable, even to indictment for felony, for failure to report a contribution made for the committee without alleging that the contribution in question was ever accounted for to the treasurer, or other facts giv-

ing rise to a duty upon the part of the treasurer to demand an accounting, then such a construction would render the statute of doubtful constitutional validity.

Chaplin Refining Co. v. Corporation Comm, 286 U. S. 210, 76 L. Ed. 1062.
United States v. L. Cohen Grocery Co., 255 U. S. 81, 89, 65 L. Ed. 516.

Under the theory held by the majority of the Court of Appeals respecting the criminal liability of the treasurer of a political committee to account for contributions not made to it but to others for it, it results that control as to liability to criminal prosecution would be removed entirely from the committee and be placed solely with persons in no way related to, or even known to the committee. If the construction contended for by the Government is correct, the liability of the treasurer of a political committee to prosecution would depend not upon the knowledge which imposes an obligation upon the treasurer to report, but alone upon whether someone made a contribution to any person for the committee, and on this latter theory the treasurer could be indicted even if such treasurer did not know of it.

Consider what would follow if such a construction were allowed to stand. The political enemies of a committee could make a contribution to a third person without its knowledge, render no accounting to the treasurer of the committee and if the treasurer failed to report it, secure his indictment and prosecution. Or a corporation, which is prohibited by law from making contributions, could make a contribution to a third person for a political committee, never account for it to the committee, or authorized or accepted by it, and the treasurer of the committee be subsequently indicted and prosecuted for failing to report

a contribution which it never accepted and as a matter of law it could not accept. Or, if a person made a contribution to some one for a political committee, although the person receiving it was not authorized to solicit funds, and the recipient pocketed the money and appropriated it to his own personal use, under the construction insisted upon by the Government the treasurer of the political committee could be indicted and prosecuted.

The majority opinion holds that the government may indict the treasurer of a political committee and place her upon trial upon the bare allegation that some one made a contribution for the committee, and this without alleging to whom the money was paid, that it was ever accepted by the committee or that she had knowledge of it.

Not only that, but the majority opinion declares, "It will always be presumed, however, that the treasurer possesses knowledge of contributions which are made to or for the committee." Under such a construction of the statute the government upon trial if it proved the allegation of the indictment would be entitled to an instruction to the effect that the treasurer of a political committee is presumed to know of all contributions made "for the committee," although it had neither alleged nor proved that the contributions were received, or accepted, to whom they were made or that they were paid to any agent of the committee which is the very corpus deliciti of the offense. The responsibility of a treasurer of a political committee is to report only contributions accepted or used by the committee.

By a careful study of the majority opinion just quoted, creating a presumption of guilt, it will appear to the Court that in order to establish his innocence a defendant charged with crime must show a bona fide

exercise of reasonable care and diligence in the performance of the duties of the office. Since good faith is a personal defense based largely upon the mental processes and the motives actuating the defendant, and since no one can explain those motives except the defendant, and since no one else has knowledge of whether or not a given action was taken in good faith, the action of the Court in writing into the Corrupt Practices Act a requirement that the defendant must show his good faith by showing the exercise of reasonable care and diligence in the performance of the duties of his office, (i. e., in ascertaining when, by whom and how contributions were made to his committee,) amounts to a requirement that in order to show such good faith the defendant must take the stand and testify, whether or not any evidence had been adduced to show bad faith, breach of duty, or breach of obligation to report contributions. Otherwise, under the majority opinion, the trial Court might hold and charge that the **presumption of knowledge** written into the Corrupt Practices Act by the majority opinion was tantamount to being guilty, as charged, unless and until the defendant assumed the burden of proving his innocence and overcoming this presumption. To maintain this position, we submit, means an utter disregard of the fundamental presumption of innocence which belongs to every defendant and which attends him throughout the case.

This would be a direct violation of the rights of the defendant under the Vth amendment to the Constitution, reading as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject

> for the same offense to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against, himself.** nor be deprived of life, liberty or property, **without due process of law**; nor shall private property be taken for public use, without just compensation."

Boyd v. United States, 116 U. S. 616, 29 L. Ed. 746.

The Corrupt Practices Act nowhere in express terms creates any prima facie presumption. If such presumption arises it grows out of judicial construction. That such a presumption is wholly unjustified and would be in direct disregard of the plain provisions of the act is clearly indicated by the fact that Sec. 243 provides the manner by which the recipient is to give to the treasurer of a political committee the information requisite for the making of reports and keeping the accounts respecting contributions made "for the committee." This shows the Congress recognized that a treasurer of a political committee would not at all times have knowledge of contributions made "for the committee" when such contributions are not made "to the committee" or an agent thereof. It declares:

> "Every person who receives a contribution **for a political** committee shall, on demand of the treasurer, and in any event within five days after the receipt of such contribution render to the treasurer a detailed account thereof."

The foregoing section of the Act unquestionably makes it the duty of the treasurer to demand an accounting of contributions made "for the committee" when the treasurer has knowledge of them, but it also provides for a situation where a contribution is made "for the committee" without the knowledge of the treasurer. In that case it is made the duty of the

recipient within five days to account to the treasurer therefor.

A treasurer can, of course, demand an accounting only when he has knowledge of the contribution made "for the committee." Because of this Congress made provision for the situation which arises where the treasurer has no knowledge by making it the duty of the recipient to report within five days.

It is submitted, therefore, that in view of this clear statutory recognition of the fact that there are circumstances under which the treasurer may have no knowledge of a contribution made by some one "for the committee," there is no justification for the creation of a judicial presumption of knowledge under all circumstances.

In a campaign of nation-wide scope, such as is involved in the election of a President of the United States, it is absolutely impossible for the treasurer of a political committee to know of every instance when some individual citizen, may make a contribution "for the committee" or expend money "on its behalf." The presumption can reasonably arise only when it is shown that it is made to the committee or some agent thereof. Therefore, the construction of the act adopted by the majority of the Court of Appeals creating a presumption against the treasurer, it is submitted, falls within the class of an unreasonable presumption preferred to in McFarland v. American Sugar Refining Co., 241 U. S. 79, 86, 60 L. Ed. 899.

It is respectfully contended that Mr. Justice Van Orsdel in his dissenting opinion has correctly interpreted the statute, saying:

> "The **corpus delicti**, or the body of the crime as laid in the statute, consists of a political committee, as defined therein, receiving funds, using them, and failing to make a detailed report there-

of to the Clerk of the House of Representatives. The indictment fails to allege that any funds ever came into the possession of the committee or any person connected with the committee. Thus it appears that the first essential element leading to the possible commission of the crime is lacking, and without possession there can be no distribution; hence, in the absence of these two fundamental elements, the failure to report is not a crime, since to meet the requirements of the statute there is nothing to report. The essence of the crime is failing to report money that came into the possession of the committee; and from whom received, and funds paid out by the committee, and to whom such payments were made. In other words, the indictment fails to charge the crime defined in the statute, or any offense whatever. It is an elementary rule of criminal pleading, that, until the fact that the crime has been actually perpetrated and proved, in the manner alleged in the indictment, there can be no conviction."

Or as Mr. Justice Proctor of the Supreme Court of the District of Columbia said in his opinion sustaining the demurrer:

"A consideration of section 244, in the light of all other related provisions of the act, leads fairly to the conclusion that the legislative intention is to require the treasurer of a political committee to report only contributions received by him and those duly reported to or accounted for to him. Certainly it was not intended to hold one criminally responsible for failure to report a contribution of which he had no knowledge. This is a proposition advanced by the government to which I cannot assent. It calls for an unreasonable and harsh construction which is neither warranted by the nature of the act, its language, nor its intent.

"Nor can I accept the alternative contention that those counts which charge a **wilful** failure by Burroughs to report contributions made **for** the committee impute to her knowledge of contribu-

> tions received by another. The term 'wilful,' as used in these counts, is merely an adoption of the word employed in section 252 to differentiate in the penalties between a purposed and intentional violation of the act and one occurring thoughtlessly or accidentally through inadvertence or mistake."

Even if the government were to prove every allegation made in this indictment it would not have established an offense under the act.

Because of the distinction made in the act between direct and indirect contributions the case cited by the Government relating to the sufficiency of indictments in general have no application.

The case comes within the rule laid down by this Court in United States v. Mann, 95 U. S. 580, 24 L. Ed. 531, 533, wherein this Court, quoting Chief Justice Marshall and Mr. Justice Story, declared:

> "Examples of the kind where it has been held that it is not sufficient to follow the words of the statute are quite numerous, and they show that many of the exceptions are as extensively recognized and as firmly settled as any other rule of pleading in such cases. Views of a corresponding character are expressed by this court in another case, where the opinion was delivered by Mr. Justice Story. Having stated the rule that it is in general sufficient to allege the offense in the very terms of the statute, he proceeds to remark: we say in general, for there are, doubtless, cases where more particularity is required, either from the obvious intention of the Legislature or from the known principles of law, both of which exceptional requirements are applicable in this case."

The indictment, not alleging to whom the several alleged contributions were paid, is clearly insufficient to permit it to be pleaded in bar.

CONSPIRACY COUNTS NINE AND TEN

With respect to these counts the government contends that scienter is clearly alleged by the words "each of said defendants then well knowing all the premises aforesaid unlawfully and feloniously did conspire * * and agree together" to commit the offenses charged in the substantive counts.

The only "premises aforesaid" which the appellees are charged with knowing is that E. C. Jameson made contributions "for the committee" on dates specified. It is nowhere alleged to whom the contributions were made, or paid, nor are any other facts set forth giving rise to the duty of the treasurer to demand an accounting and file report. The treasurer could not account for an indirect contribution until it had been accepted and accounted for to the committee. Even if it be assumed that the treasurer knew that E. C. Jameson had made a contribution, not to the committee but to someone for the committee, there was no way by which she could require an accounting since the statute imposes no duty in this respect upon the contributor. Section 243 places the duty of **accounting to the treasurer upon the recipient.** Therefore, as neither of these conspiracy counts nor any of the other counts alleges to whom the contributions were made, i. e., who the recipient was, they are fatally defective. The government further undertakes to supply the deficiency of allegations by asserting the words "did conspire" import to the treasurer knowledge of contributions. This plainly cannot be so since it might be true that the treasurer knew a contribution was made for the committee but not knowing the recipient could not demand an accounting and therefore under such circumstances a mere charge that the treasurer and the chairman agreed not to report the contribution would state no offense under the statute.

CONCLUSION

It is respectfully submitted that the judgment of the Court of Appeal of the District of Columbia should be reversed for the reasons:

1. That the sections of the Federal Corrupt Practices Act of 1925 relating to presidential electors upon which the indictment is based are unconstitutional.

2. Should the legislation be held to be within the implied power of Congress, the indictment is insufficient to charge any offense under the statute properly construed.

Respectfully submitted,

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